

26.07.2023

CO 414 of 2022

**Priority Dealer Private Limited
Vs.
Sri Anil Biswas**

Mr. Dwaipayan Basu Mullick
Ms. Shreya Chaudhary

... .. for the petitioner

Mr. Samarjit Balial
Mr. Neelavo Bera

... .. for the opposite party

This revisional application has been filed challenging the order dated December 15, 2021 passed in Title Suit No.236 of 2012, by the learned Civil Judge (Junior Division), 1st Court at Alipore, South 24-Parganas.

By the order impugned, the prayer of the petitioner for local inspection on certain points with regard to the present status of the suit property and the nature of occupation thereof, was rejected. Learned Court below rejected the said application on the following grounds :

- (a) It was an admitted position, that at the instance of the petitioner, the High Court had passed an order upon the Kolkata Municipal Corporation to demolish the property in question.
- (b) Although, the petitioner claimed dispossession, he did not file any application for recovery of possession.
- (c) After lapse of two years from alleged dispossession, an application for local inspection was filed.

(d) The photographs produced in support of the local inspection, did not indicate whether the same were of the suit property or not.

(e) The application for local inspection was filed only to fish out the evidence.

Learned advocate for the petitioner submits that an application for restoration of possession had been filed, which was overlooked by learned Court below. Secondly, the order of demolition was never implemented.

Learned counsel for opposite party submits that the application for restoration of possession had been dismissed by a reasoned order. The said order of dismissal was binding on the parties, as the same had attained finality. The subsequent points raised in the application for local inspection in order to establish dispossession, would be barred by res judicata.

The petitioner was in possession upto 2016. Thereafter, when the Kolkata Municipal Corporation found unauthorized construction, steps were taken for demolition. The demolition had taken effect.

Under such circumstances, the learned Court below had rightly rejected the application for local inspection.

Having heard learned counsel for the respective parties, this Court finds as follows:-

(a) There is an admission in the earlier application for restoration of possession filed under Section

151 of the Code of Civil Procedure, that a demolition notice had been served and a demolition process had started.

- (b) Challenging partial demolition, the petitioner approached the High Court and this High Court had directed the Kolkata Municipal Corporation to cause further inspection and thereafter demolish the unauthorized portion.
- (c) In the inspection report of the Kolkata Municipal Corporation, there was a clear indication that the hotel was running from the ground floor of the premises and the first floor was fully occupied. The petitioner himself, wanted the Kolkata Municipal Corporation to demolish the structure.
- (d) At the relevant point of time, during inspection, the petitioner's possession was not found by the Kolkata Municipal Corporation or at least not mentioned in the report.
- (e) The issue of restoration of possession was finally decided by an earlier order which cannot be reopened at a stage, when the order had attained finality.
- (f) Unless there was clear evidence that there had been dispossession, the Court should be slow to interfere.

(g) In this particular case, further local inspection to establish the allegation of dispossession cannot be permitted. The Court rightly held that it would only amount to reopening an issue which was finally decided and would also amount to fishing out evidence.

The revisional application is dismissed. The suit should be decided expeditiously and within a period of six months from the date of communication of this order.

At the final hearing, points raised by the parties in this revisional application, shall be available.

C.O.414 of 2022 is disposed of.

There shall be no order as costs.

Parties to act on a server copy of this order

(Shampa Sarkar, J.)